

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NO. 03CV12216-MLW

EASTERN CONTRACTORS, INC.)
)
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 Plaintiff)
)
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 v.)
)
)
 CITY OF WORCESTER, and THOMAS)
 R. HOOVER, City Manager, and)
 HEERY INTERNATIONAL, INC. and)
 THOMAS A. ELLIS,)
)
)
 Defendants)
)

**DEFENDANT CITY OF WORCESTER'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

General objection. Defendant City of Worcester ("the City") hereby objects to Plaintiff Eastern Contractors, Inc. ("Eastern")'s definition of the term "Project" to include "the design bidding and construction of the Worcester Vocational High School." Since this lawsuit is limited to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, Eastern's document request, to the extent it exceeds that limit, is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving the applicability of this general objection to each of the following document requests, the City responds to those requests, pursuant to Fed. R. Civ. P. 34.

Request 1. Any and all requests for proposals, invitations to bid, proposals or other like documentation concerning the design, construction, materials, equipment or labor to be furnished to the Project.

Response 1. Objection. This request is unduly vague and overly ambiguous in its reference to "or other like documentation." Moreover, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in,

this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 2. Any and all documents concerning estimates, take-offs, budgets, appropriations, votes, resolutions or other similar documents with respect to costs of the Project.

Response 2. Objection. This request is unduly vague and overly ambiguous in its reference to "or other similar documents." Moreover, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 3. Any and all documents relating to quotes, bids or proposals for the Project.

Response 3. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 4. Any and all documents relating to contracts or other agreements between Worcester and any other person, party or entity concerning the Project.

Response 4. Objection. This request is unduly vague and overly ambiguous in its reference to "or other agreements." Moreover, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 5. Any and all modifications, change orders, additions or any other documents relating to any contract between Worcester, and any other person, party or entity concerning the Project.

Response 5. Objection. This request is unduly vague and overly ambiguous in its reference to "or any other documents." Moreover, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 6. Any and all documents relating to any proposals, contracts, settlement agreements or other agreements between Worcester and any other person, party or entity concerning the Project' on bids for the Project.

Response 6. Objection. This request is unduly vague and overly ambiguous in its reference to "settlement agreements or other agreements." Moreover, this

request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 7. Any and all documents sent to Worcester or received by Worcester, from Eastern or any other person, party or entity relating to the Project.

Response 7. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 8. Any and all documents relating to backup files or supporting documents for any and all change orders requested, approved and/or disputed for the Project, including but not limited to notice letters, memoranda, or statements, cost estimates and take-offs regarding the changed work, and any scheduled analysis of this impact of the changed work.

Response 8. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational

High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 9. Any and all documents related to or constituting any notice of claim from Eastern on the Project.

Response 9. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 10. Any and all cancelled checks, ledgers, books or other documents evidencing payment made to any other person, party or entity concerning the Project.

Response 10. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 11. Any and all documents relating to costs of the Project, including but not limited to balance sheets, budgets, funding requests, requisitions by, between or among Worcester or any of its officials, administrators, employees or agents, and any other person, party or entity.

Response 11. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this

lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 12. Any and all documents or correspondence relating to the Project by, between or among Worcester and any other person, party or entity.

Response 12. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 13. Any and all documents relating to any meetings dealing with any aspect of the Project, including but not limited to, minutes, memoranda or notes.

Response 13. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 14. Any and all documents relating to Worcester's job site visits or work on the Project, including but

not limited to, trip reports, daily reports, logs, minutes, memoranda or notes.

Response 14. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit.

Request 15. Any and all inter-office correspondence and other communications with Worcester and any other person, party or entity.

Response 15. Objection. This request is overly broad in its failure to provide any time or subject parameters. Further, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 16. Any and all documents relating to any and all person-to-person communications, including telephone, facsimile, and/or e-mail between from or among Worcester and any other person, party or entity with respect to the Project.

Response 16. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 17. Any and all internal and external Worcester memoranda and notes relating to the Project.

Response 17. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 18. Any and all daily documents, reports, diaries, calendars, logs, or other records regularly kept by Worcester relating to the Project.

Response 18. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 19. Any and all chronologies prepared by or on behalf of Worcester with respect to the Project.

Response 19. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 20. Any and all documentation relating to any request for proposals, bids, solicitations for the bid, and any re-bids of the Project.

Response 20. The City grants this request as to any and all non-privileged documents in its possession, custody or control, which can be inspected at the City's offices at a mutually convenient date and time.

Request 21. Any and all documentation relating to any pre-qualification, investigation of qualifications, investigation of references, of any bidder for the bid, and, any re-bid of the Project.

Response 21. The City grants this request as to any and all non-privileged documents in its possession, custody or control, which can be inspected at the City's offices at a mutually convenient date and time.

Request 22. Any and all documentation relating to any appropriations, grants or other financing for the construction of the Project for both the bid and any re-bid.

Response 22. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit.

Request 23. Any and all documentation relating to any votes, or meetings, by any elected or appointed entity of Worcester regarding any and all bids and re-bids for the construction of the Schools.

Response 23. Objection. This request is unduly vague and overly ambiguous in its reference to "the Schools." Moreover, this request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit.

Request 24. Any and all documentation by, to, between, and among Worcester, and any other person, party or entity regarding any and all bids and re-bids, or bidders for the Project.

Response 24. The City grants this request as to any and all non-privileged documents in its possession,

custody or control, which can be inspected at the City's offices at a mutually convenient date and time.

Request 25. Any and all documentation concerning the rejection of any bid for the Project.

Response 25. The City grants this request as to any and all non-privileged documents in its possession, custody or control, which can be inspected at the City's offices at a mutually convenient date and time.

Request 26. Any and all documentation concerning the selection of any bid, bids or bidders for the Project.

Response 26. The City grants this request as to any and all non-privileged documents in its possession, custody or control, which can be inspected at the City's offices at a mutually convenient date and time.

Request 27. Any and all documentation regarding the bidding, financing and construction of the Project.

Response 27. Objection. This request is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence in, this lawsuit. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

Request 28. Any and all documents relating to any expert witness relating to the Project.

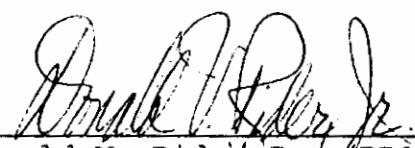
Response 28. Objection. This request seeks discovery beyond the scope permitted under Fed. R. Civ. P. 26(b) (4).

Request 29. Any and all documents relating to your Affirmative Defenses.

Response 29. Objection. This request seeks discovery protected by the attorney-client privilege and/or the attorney work-product doctrine. Notwithstanding and without waiving this objection, the City grants this request as to any and all non-privileged documents in its possession, custody or control that are relevant to the bidding process, including the submittal of bids, evaluation of bids, and rejection of Eastern's bid, regarding the Worcester Vocational High School, which documents can be inspected at the City's offices at a mutually convenient date and time.

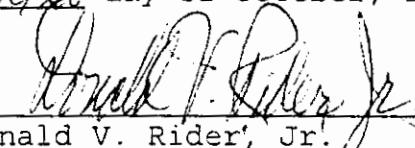
CITY OF WORCESTER
By its attorneys,

David M. Moore
City Solicitor


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CERTIFICATE OF SERVICE

I, Donald V. Rider, Jr., hereby certify that I have served upon all parties of record Defendant City of Worcester's Response to Plaintiff's First Request for the Production of Documents by mailing a copy of the same, postage prepaid, to Edward F. Vena, Esquire, Vena Riley Deptula, LLP, 250 Summer Street, 2nd Floor, Boston, MA 02210; Edward J. Quinlan, Esquire, Quinlan & Sadowski, P.C., 11 Vanderbilt Avenue, Suite 250, Norwood, MA 02062; and Warren D. Hutchison, Esquire, Donovan, Hatem LLP, Two Seaport Lane, Boston, MA 02210 on this 29th day of October, 2004.


Donald V. Rider, Jr.
Assistant City Solicitor